

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERALD R. DEVER, THOMAS J. LAUGHLIN and WILLIAM S. ROGERS

Appeal No. 1997-0011
Application No. 08/162,508

ON BRIEF

Before JOHN D. SMITH, WALTZ and KRATZ, Administrative Patent Judges.

JOHN D. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal pursuant to 35 U.S.C. § 134 from the final rejection of claims 1 through 9.

Claim 1 is representative and is reproduced below:

1. A deodorizer comprising:

a) a patch containing fragrance;

b) a fastener having means for securing said fastener to a surface;
and

c) means directly attached to said fragrance containing patch and
means attached to said fastener providing releasable interlocking
surfaces which engage upon pressing together said interlocking
surfaces of said patch and said fastener and release upon pulling
said surfaces apart.

The references of record relied on by the examiner are:

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| Greenawalt | 4,694,590 | Sep. 22, 1987 |
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| Guillet ¹ | Fr 1,445,904 | Oct. 21, 1966 |
|----------------------|--------------|---------------|

The appealed claims stand rejected under 35 U.S.C. § 103 as unpatentable over
Greenawalt in view of Guillet.

We cannot sustain the stated rejection.

The subject matter on appeal is directed to a deodorizer comprising a fragrance
containing pouch and a fastener having means, e.g., a pressure sensitive adhesive layer, for
securing the fastener to a surface, e.g., the interior surface of a shoe. Attached to the
fragrance containing pouch and to the fastener are releasable interlocking means such as a
Velcro hook/loop construction combination. An advantage of the claimed deodorizer is that
after the fragrance of the patch is depleted, the used patch may be detached and replaced
with a fresh fragrance containing patch. It is significant to note that appellants' invention,
although called a "deodorizer", is limited to the deodorizing through the use of perfume,

¹Our reliance on Guillet is based on an attached English translation.

colognes and sachets, which mask rather than neutralize malodors (see the specification at page 1, lines 13 through 24). Thus the "patch containing fragrance" defined by appellants' claims excludes the use of common prior art neutralizing deodorants, as appellants have implicitly argued in their brief.

As evidence of obviousness of the claimed deodorizer, the examiner relies on the combined teachings of Greenawalt and Guillet. Greenawalt contains no disclosures relating to fragrances or deodorizers, which is the subject matter of the herein claimed invention. What Greenawalt discloses is an arch support (19) as shown in figure 1 which uses Velcro-type interlocking pads (31) for releasably attaching the arch support to a second Velcro-type interlocking pad (32) secured to a shoe inner sole.

Guillet teaches a double insole as shown in figures 1 through 7 in which an adsorbent paper insole (referred to as "b") is interlayered between the layers of the double insole. The adsorbent paper sole is impregnated with an antiseptic deodorizing product which neutralizes unpleasant odor released from feet. (see the translation at page 1). As appellants point out in their brief, Guillet contains no teaching about means directly attached to a fragrance containing patch and means attached to a fastener providing releasable interlocking surfaces which engage upon pressing together said interlocking surfaces of a patch and a fastener as required by the appealed claim deodorizer.

The examiner argues that one of ordinary skill in this art would have been motivated to

combine the relevant teachings of Greenawalt and Guillet to provide an arch support which also has foot deodorizing properties. However, the examiner has provided no factual evidence in this record showing the use of any prior art arch support which has a foot deodorizing property.

Clearly, as appellants have argued in their brief, the examiner has pointed to no teachings in the relied upon references which would have motivated or suggested to one of ordinary skill in this art, the impregnating of the underside first pad (31) of Greenawalt with the "antiseptic deodorizing product" of Guillet. The mere fact that the prior art could be modified or combined as proposed by the examiner does not render the resultant combination claimed herein obvious unless the prior art suggest the desirability of that combination. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d, 1780, 1783 (Fed. Cir. 1992). Moreover, the examiner must persuasively explain why the prior art would have suggested to one of ordinary skill in the art, the desirability of that modification. Here, the examiner has failed to provide a persuasive explanation of why one would have modified Greenawalt's arch support in the manner proposed by the examiner.

Appellants also argue, and we agree, that the combination of Greenawalt and Guillet fail to teach the use of a "patch containing fragrance" as required by the appealed claims. As appellants point out, as used by them, the term "fragrance" is one which is limited to materials such as perfumes which mask disagreeable odors, and which do not "antiseptically

neutralize" such odors. As noted above, Guillet does not disclose the use of a fragrance, as contemplated and claimed by appellants, but rather the use of an "antiseptic deodorizing product". Thus the combined teachings of Greenawalt and Guillet do not show all the claim limitations required by appellants' appealed claims. See Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439-40 (Fed. Cir. 1988) (a structure created from the prior art references "would in any event, fall short of the invention" defined by the claims). In resolving the obviousness of a claimed invention as a whole within the meaning of 35 U.S.C. § 103, every limitation in a claim must be considered.

The decision of the examiner is reversed.

REVERSED

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| JOHN D. SMITH |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| THOMAS A. WALTZ |) | APPEALS AND |
| Administrative Patent Judge |) | INTERFERENCES |
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| PETER F. KRATZ |) | |
| Administrative Patent Judge |) | |

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